

1 but his opinion of programming which his family enjoys, I
2 don't see that's, that is, is the type of evidence the
3 Commission is looking for from community leaders.

4 MR. EMMONS: Well --

5 JUDGE CHACHKIN: And norm -- and, as I say, commu-
6 nity leaders testify about things that they know of because of
7 their experience with the station. They don't make general
8 statements about the fact that one individual enjoys the
9 programming on the station, and that kids enjoy the program on
10 the station. What am I supposed to do with that? That's not
11 what a community leader testifies to, and that's what we have,
12 apparently, throughout this thing, throughout your exhibit,
13 are statements which go far beyond what a community leader
14 should be testifying about, namely his involvement with the
15 station and what the station has done for his particular
16 organization, but we have here general statements about repu-
17 tation, general statements about his enjoyment of programming,
18 the fact that they're regular watchers. I don't know what
19 "regular watchers" means. Does that mean he watches it 24
20 hours a day or 12 hours a day? What does that mean and how
21 does that distinguish him from any other viewer of the sta-
22 tion? How does that make it important, the fact that this
23 individual, who happens to be a policeman in this case,
24 watches the station or whatever -- whoever else the listeners
25 are? What I'm saying is, community -- these -- this is not

1 | what I would call testimony of a community leader.

2 | MR. EMMONS: Your Honor, I'm not aware of any
3 | requirement that the Commission has imposed that, that public
4 | witness testimony for renewal expectancy purposes has to come
5 | from a "community leader."

6 | JUDGE CHACHKIN: Well, the point in the matter, it
7 | has to be -- come from someone who -- well, I disagree with
8 | you as far, as far as that is concerned. The, the Commission
9 | does ex-- note the fact that one important thing, whether
10 | there have been letters to the station critical of the sta-
11 | tion, evidence of that nature is important, whether the fact
12 | that there is an absence of criticism from its listeners to a
13 | station, but the fact of the matter is that you pick out
14 | somebody on the street and put in an affidavit from them
15 | saying that he enjoys the station, it -- this isn't a per-
16 | son -- this isn't a popularity contest. Whether he particu-
17 | larly likes the station and his kids enjoy the station, and
18 | his family enjoys the station, that's not the type of evidence
19 | the Commission generally looks at, at least in, in my involve-
20 | ment in it. You've mentioned Fox. In Fox, there were commu-
21 | nity leaders who testified in Fox, and that -- what they
22 | testified to was their involvement with the particular sta-
23 | tion, their knowledge based on the fact of what programs they
24 | appeared on and the assistance that the station rendered
25 | their, their organization, but here you're putting in testi-

1 mony from Timothy L. Ball. "I'm a police officer." Why is
2 this different, the fact that he's a police officer, than
3 bringing someone out who works in a steel mill. I mean, how,
4 how do -- can you define that as a community leader that I'm
5 supposed to give some special importance to him as any other
6 listener or any other viewer of the station?

7 MR. EMMONS: Well, Your Honor, I think if you --

8 JUDGE CHACHKIN: You put it forth as a community
9 leader. These, these are community leaders.

10 MR. EMMONS: All right, then --

11 JUDGE CHACHKIN: Community leaders mean the mayor,
12 members of the city council, heads of organizations. That's
13 community leaders. What you have here is ordinary viewers,
14 and, as I say, this is not a popularity contest. The fact
15 that this particular individual and his children enjoy some
16 programs, I don't see how that has anything to do with deter-
17 mining whether or not the station did a good job or didn't do
18 a good job as far as renewal expectancy is concerned. Anyone
19 else have any comments on what I've just said? What's the
20 Bureau's view about this?

21 MR. SHOOK: Your Honor, the Bureau -- at, at this
22 stage, I can say that the Bureau is not aware of a requirement
23 that the person offering evidence under these circumstances
24 has to be a community leader, and my only thought on this
25 would be that whether or not the person is a community leader

1 or holds some lesser position in the community might have an
2 impact on the weight that is given to the particular testi-
3 mony, but in terms of this person -- if this person watches
4 whatever shows it is that are noted in his exhibit, it would
5 seem to me that this person would have as much right to com-
6 ment on what he saw and how it related to the community as
7 would any other person. It would simply be a matter of how
8 much weight one could ascribe to this person's views.

9 JUDGE CHACHKIN: Well, what weight could you ascribe
10 to his views, the fact that he enjoys a couple of programs,
11 his children enjoy a couple of programs on the station? What
12 weight can you ascribe to that?

13 MR. SHOOK: Your Honor, it might be minimal but I
14 would, I would think, I would think the person could still
15 provide evidence. It just might not be accorded very much
16 weight, that's all. I mean, other than that I'm not prepared
17 to speak on this subject.

18 JUDGE CHACHKIN: Well. Do you have anything
19 Mr. Schauble further?

20 MR. SCHAUBLE: Your Honor, I think another problem
21 with this which, which is implicit is, you know, opinion
22 about, you know -- somebody's opinion about any, you know,
23 about any type of program is not necessarily relevant. If
24 it's something that's not -- if it's not the type of program
25 that's not considered under renewal expectancy, I, I don't

1 think, I don't think the person's opinion has any relevance.
2 For instance, if there was somebody from a CBS -- who watched
3 a CBS affiliate who like their sports programming or their
4 entertainment programming, I don't think it had -- I don't
5 think that opinion, even assuming it was an honest and bona
6 fide opinion, would have any relevance to the -- under the
7 renewal expectancy, and here, what we have here concerning
8 children, particularly concerning the children's program, is
9 an animated adventure program and an animated variety program,
10 and I, I would submit while certain types of children's pro-
11 gramming could be relevant under renewal expectancy, I don't
12 think these programs meet that sort of test.

13 JUDGE CHACHKIN: And I have another difficulty with
14 it. I mean, this man claims to have seen certain programs.
15 There is no evidence here that he taped these programs and
16 watched them, or when he watched them. If he's being put
17 forth as someone who has knowledge of the station's program-
18 ming, there's no evidence supporting that. The fact that he
19 watched an occasional program on the station doesn't give him
20 a right to make a statement as to whether the station's pro-
21 gram is good or bad. Normally, the Commission, when, when,
22 when someone's organization, or a group, or an individual
23 claims something about the station, it's required that you
24 provide evidence as specific watching times that he watches
25 the station, the hours he watches the station. There's noth-

1 ing here indicating -- these are general statements there are
2 particular programs he might have enjoyed. What am I supposed
3 to do with that? On the basis of this I can make a determina-
4 tion whether the station did a good job or not, the fact that
5 one particular listener enjoyed two or three programs with no
6 information here as to the contents of any of these programs,
7 the times he watched them, the frequency which he watched
8 them?

9 MR. EMMONS: Well, Your Honor --

10 JUDGE CHACHKIN: And if I don't have that informa-
11 tion, then what do I have here?

12 MR. EMMONS: Well, I, I --

13 JUDGE CHACHKIN: That's why I say when a community
14 leader testifies he can provide factual evidence which you can
15 rely on as to what specific efforts the station made on behalf
16 of his organization, and he documents that specific efforts by
17 the date, the time, and what was done. All I have here are
18 some general statements about children's programming. How is
19 that competent to, to show me whether or not the station has
20 done a good job or not? The fact that he enjoyed -- "my
21 children particularly enjoyed "Flying House" and "Super
22 Book -- is there any evidence here as to how many times they
23 saw this program or times and frequency?

24 MR. EMMONS: Your Honor, I --

25 JUDGE CHACHKIN: There's nothing in there, so what

1 am I supposed to do with this?

2 MR. EMMONS: Your Honor, I think that the -- I'm not
3 aware that the Commission has ever imposed that rigid a
4 requirement in terms of detail what public witnesses have to
5 provide. I think it is, is unreasonable to require a public
6 witness to extend back over a 5, or in the case of radio,
7 7-year time period to be able to specify particular dates and
8 times on which he watches particular programs that may have
9 stood out in his mind, and he now remembers, and wants to
10 testify about, and I think, frankly, that any of these wit-
11 nesses are competent to speak to their opinions and regardless
12 of what weight the Commission may or may not want to give to a
13 particular individual's opinion of the programming, I think it
14 is relevant. I think, I think the case law establishes that.

15 JUDGE CHACHKIN: Where is the case law establishing
16 that the opinion of listeners as to programs is relevant?

17 MR. EMMONS: I think, think that the famous observa-
18 tion by Justice -- Judge -- then Judge Burger on the Court of
19 Appeals in the, I believe, the Victor case of --

20 JUDGE CHACHKIN: The what case?

21 MR. EMMONS: -- the radio -- well, the community
22 involved was, was Albemarle, North Carolina, as I recall.
23 WWWZ was the name of the case, I think, at the Commission. It
24 went up to the Court of Appeals under the name of, of Victor
25 vs. FCC.

1 JUDGE CHACHKIN: Victor Radio, yes.

2 MR. EMMONS: Victor Radio, and I believe it was in
3 that case where, where Judge Burger stated, or maybe his
4 statement was quoted in that case that the best measure of a
5 station's performance is the opinion of the members of the
6 community it serves, and I think that establishes and, and,
7 and it is a perfect expression of what Commission policy is on
8 that point, and I don't think the Commission has ever required
9 that public witnesses be so-called community leaders. I have
10 been in other renewal cases in the past, Your Honor, where,
11 where, where such witnesses what one would ordinarily call a
12 community leader, although in connection with the exhibit
13 we're looking at right now, No. 2, the man is not only a
14 policeman, but he is also an associate pastor of a church and
15 he's appeared on these programs that were on this station
16 that --

17 JUDGE CHACHKIN: Well, I have no problem with him
18 testifying as to about his appearances on the station and the
19 services rendered by the station to him as an associate pas-
20 tor.

21 MR. EMMONS: But --

22 JUDGE CHACHKIN: My difficulty is when he starts
23 talking about the popularity of programs, the fact his chil-
24 dren enjoy programs, or he enjoys programs which have nothing
25 to do with the service provided by the station to him. That's

1 my difficulty, when he strays beyond what he has factual
2 knowledge of to making general statements as to the station's
3 programming and his, and his family's, enjoyment of the pro-
4 gramming. That's where my difficulty comes. Yes?

5 MR. SCHONMAN: Your Honor, if I could just offer a
6 point. During this discussion for a few minutes, I was perus-
7 ing the Fox Television Station decision of March 10, 1993, and
8 in paragraph 35 of that, of that review board decision there
9 is a discussion about, about such witnesses as, as we're
10 considering here, and the review board states, "nor does the
11 case law suggest that public witnesses must claim to speak for
12 others or even for themselves as to the, as to the station's
13 general reputation in the community. Their own views and
14 experiences are helpful." I think that reflects, essentially,
15 what my colleague, Jim Shook, said a, a few moments ago, that
16 the information is, is relevant. It's just a matter of how
17 much weight should be accorded the, the testimony.

18 MR. SCHAUBLE: Your Honor, could I respond to that?

19 JUDGE CHACHKIN: Yes.

20 MR. SCHAUBLE: Two points need to be made: one,
21 that I, I still don't think that he's showing that his opin-
22 ions about this type of programming, particularly the chil-
23 dren's programming, is relevant; and, two, even if one accepts
24 the argument that the opinion, that the opinion is relevant,
25 then there's still the problem that this exhibit doesn't show

1 a competent basis for the opinion, which would obviously be
2 needed before any weighting whatsoever could be given to this
3 matter.

4 MR. EMMONS: Your Honor, I used to have a client who
5 said, "The one thing in the world that I'm an expert upon is
6 my own opinion," and I think it's self-evident that anybody
7 who gives an opinion is, is competent to give that opinion
8 because that's what it is, it's opinion. If I could just make
9 one final point, Your Honor, not to belabor this but, but the
10 one thing that the Commission does not do, and I think does
11 not want to do, is to exclude the public from having a voice
12 in matters concerning a station's performance on the, on the
13 subject of renewal expectancy, and to exclude member's --
14 opinions of members of the public on the ground that although
15 they are the person's opinion they are somehow not competent
16 to give that opinion, I think would, would go against every-
17 thing that the Commission has stood for in terms of, of
18 enabling stations to demonstrate whether or not they are
19 entitled to a renewal expectancy; and, again, Your Honor, here
20 we're talking about weight as Mr. Shook has well pointed out,
21 and I, I think these exhibits ought to come in as relevant and
22 the parties can argue in proposed findings what they want to
23 argue on the subject of weight.

24 JUDGE CHACHKIN: Well, if, if what you're saying is
25 the opinion of the listener is, is of such importance, why

1 | doesn't the Commission just take a survey of the listeners?
2 | As far as I know, I have never seen a renewal expectancy case
3 | where the Commissioner has allowed any such survey.

4 | MR. EMMONS: Well, but, Your Honor, again, on the
5 | other side is, is the -- is what Mr. Shook just quoted from
6 | the review board in the Fox case, which I now have in front of
7 | me as well.

8 | JUDGE CHACHKIN: Well, what he said was the opin-
9 | ion -- and, and if I recall the Fox case, since it was my
10 | case, the ones who testified there were heads of organiza-
11 | tions, or city officials who testified, and gave their opinion
12 | of, of the station service to their organization and their
13 | opinion based on what was -- what the station had done for
14 | them and their appearances on the station, their opinion as to
15 | whether the station had rendered a good service, but we're
16 | dealing here with something else. You're trying -- these
17 | individuals are trying, to provide testimony as to the reputa-
18 | tion of the station in the community, and also here, appar-
19 | ently, they're going into questions of whether or not they
20 | enjoy particular programs which have nothing to do with their
21 | knowledge -- I mean, nothing to do with what services the
22 | station performs for them or their organization, and my diffi-
23 | culty is what, what weight to give the fact that, that, that
24 | children enjoy a particular program. What weight am I
25 | supposed to give to that?

1 MR. EMMONS: Well, I think, Your Honor, when a
2 parent testifies that a, a particular program is watched by
3 his or her children, and that in the, in the opinion of that
4 parent the program is beneficial to the child in educating the
5 child about something, whether it's arithmetic or whether it's
6 about moral values, that that's something that the Commission
7 does consider as to whether or not the station is performing
8 well and is entitled to a renewal expectancy.

9 JUDGE CHACHKIN: Cite me a single case where such
10 evidence has ever been received.

11 MR. EMMONS: Well --

12 JUDGE CHACHKIN: I'm not familiar with it. I've,
13 I've tried four or five renewal expectancy cases. I've never
14 seen such evidence come in.

15 MR. EMMONS: If I recall, Your Honor, there was a
16 statement in the Pillar of Fire case which was, again, a case
17 of a station that had a significant amount of religious broad-
18 casting and one of the public witnesses cited the -- he com-
19 mended the station for instilling traditional family values
20 and patriotism in its listeners. That's from paragraph 150 of
21 the Pillar of Fire initial decision.

22 JUDGE CHACHKIN: Yeah, but you, you -- all you've
23 done is given me a conclusion. I want to know what evidence
24 came in which was the underpinning of that conclusion.

25 MR. EMMONS: Well, in this, in this --

1 JUDGE CHACHKIN: And I'm saying to you I'm not
2 familiar where the Commission has ever allowed in testimony of
3 the type that you're offering here, where an individual is
4 testifying about the fact that his children enjoy particular
5 programs or particular programs he feels are, are beneficial
6 to his children. I'm not aware of any such evidence coming
7 in.

8 (Asides.)

9 MR. EMMONS: Your Honor, I'm -- it's not possible to
10 brief these as we speak but, but I think we could submit a
11 significant submission to you of, of public witness testimony
12 of, of the nature, of the kind, that we're talking about.
13 Whether, whether it would deal exactly with children's pro-
14 gramming as opposed to some other kind of programming --

15 JUDGE CHACHKIN: I, I'm talking about where a situa-
16 tion where an individual who is put forth as this case, the
17 assistant minister or -- and a policeman, who first initially
18 testifies about his appearance on particular programs -- I
19 have no problem with that. I have no problem with the -- him
20 saying that the station has assisted him in various efforts.
21 My difficulty is when he strays from what he has -- personal
22 involvement with the station and testifies generally about the
23 likes and dislikes of his family and his children for other
24 programming, whether the Commission has ever allowed in or
25 given weight to such testimony. Do you understand the

1 distinction I'm making here?

2 MR. EMMONS: I, I understand what you're saying,
3 Your Honor. Yes, yes, I certainly do, but I, I would like to
4 have the opportunity to, to, to brief this if we, if we could.

5 MR. SCHAUBLE: Your Honor, I think I would object to
6 that. I think -- we knew objections to, to the exhibits were
7 going to come this morning, and I didn't say anything on, on
8 the first matter but if we get into this situation here where
9 we're repeatedly briefing, briefing matters, I, I think we
10 might get into a category where by the -- you know, we're
11 going to spend -- potentially we'll have two rounds of admis-
12 sions, of arguments on the admissions sessions, and I think we
13 need to get rulings on the exhibits.

14 MR. EMMONS: Well --

15 MR. SCHAUBLE: I think, I, I think we need to final-
16 ize this at some point.

17 JUDGE CHACHKIN: And then my difficult is, if you
18 want to put in such programming, then it seems to me you have
19 to establish listening habits which demonstrate that you watch
20 enough of the programming that you're in a position to render
21 an opinion about the program. You have here, "My five chil-
22 dren ages 2 through 11 also watch a great deal of the chil-
23 dren's programming of Channel 45." What does that mean, "a
24 great deal"? What specific dates did they watch the -- what
25 specific program are they talking about? I mean, what am I

1 supposed to make of that? That's general statements.

2 MR. EMMONS: Well, I, I, I think they have some
3 weight, Your Honor. I mean, they're --

4 JUDGE CHACHKIN: Well, I'm saying normally testimony
5 of that nature as to the worth, worth, worth of the program-
6 ming comes in through exhibits showing the programs, a
7 description of the programs, and the testimony from person
8 involved with the presentation of the programs, namely people
9 that are from the station. I have never seen a case which
10 evidence of this nature has come in through ordinary listen-
11 ers.

12 MR. EMMONS: Well, Your Honor, I, I'm looking at the
13 testimony of the -- Michael Everett, which -- who is the
14 general manager of the station, and it's T-- we haven't gotten
15 to it yet but it's TBF Exhibit 32, and in paragraph 38,
16 Mr. Everett describes the two programs -- or, excuse me, one
17 of them called "Flying House" that the, that the, the witness
18 Mr. Ball is testifying to in paragraph 6, and, you know, he
19 gives the times, the dates, of the broadcast, the time of day,
20 and the years in which it was broadcast, so that information
21 is in the record. It is not in Mr. Ball's statement but it,
22 but it is in the record, and --

23 JUDGE CHACHKIN: And presumably he provides some
24 description of the program and categorizes it, the nature of
25 the program.

1 MR. EMMONS: Yes, he does, as far as --

2 JUDGE CHACHKIN: That, it seems to me, is the type
3 of evidence the Commission relies on in determining whether
4 the program serves the needs of, as you say, children, or what
5 have you, but to have listeners make statements, and from that
6 I'm supposed to conclude, I assume, that this station is --
7 this particular program somehow is a worthwhile program; it
8 provides service to the community.

9 MR. EMMONS: Well, I, I think it's equally relevant
10 in what the, what the recipient of the program, the viewer,
11 thinks about the program as, as what the station itself thinks
12 about the program, and as you properly said, Your Honor, the,
13 the station's description of the program is relevant, and so
14 it seems to me that the viewers response to it is, is equally
15 relevant.

16 JUDGE CHACHKIN: Well, one isn't a, one could say,
17 an objective, an objective statement as to the program and
18 what it presents, and the Commission could draw a conclusion
19 from the, from the -- from this objective statement whether it
20 fits the categories as worthwhile in considering renewal
21 expectancy, but when you start dealing with subjective opin-
22 ions by individual listeners, then where are you? Then it --
23 are, are we to determine renewal expectancy on the, on the
24 basis of popularity contests? The fact that a particular
25 listener enjoys a program, are we then -- or should you, then,

1 as part of your case interview a, a sampling of the population
2 in the community, and should I rely on that sampling as to
3 whether particular programming should be treated as, as worth-
4 while and something that's affirmative in terms of, of renewal
5 expectancy? Or should I rely instead on some objective crite-
6 ria, namely the nature of the programming, whether it's geared
7 to particular needs, and whether it fits in the categories the
8 Commission says can be relied on, public affairs, news, what
9 have you, in terms -- or special programming -- in terms of
10 satisfying the community by looking at ascertainment, the
11 station's ascertainment, and what particular programs it, it,
12 it proposes to meet those needs? I mean, those are objective
13 criteria which I could rely on, but the fact that his -- this
14 particular family enjoys some programming, what --

15 MR. EMMONS: Well --

16 JUDGE CHACHKIN: -- that's not objective criteria.

17 MR. EMMONS: No, it isn't, Your Honor. You're
18 correct --

19 JUDGE CHACHKIN: And that's my difficulty with it.
20 I have never seen such, where the Commission has relied on
21 this objective type of evidence you're seeking to put in here.

22 MR. EMMONS: Your Honor, the Commission relies on
23 reputation testimony and opinion testimony, which by nature is
24 subjective.

25 JUDGE CHACHKIN: But the opinion rendered, what,

1 | what I would call "community leader," is his opinion based on
2 | what service the station has rendered for the organization, or
3 | it could be the community if, if it's, for instance, a city
4 | official.

5 | MR. EMMONS: Well, it's not --

6 | JUDGE CHACHKIN: By putting on programming of allow-
7 | ing this mayor of the city or what have you to be on the
8 | programming, by putting on the air announcements that the,
9 | that the community organization wants as to a upcoming drive,
10 | what have you. That's objective criteria the Commission could
11 | rely on, but here, as I say, this, this is, this is not a
12 | popularity contest. The fact that he and his family enjoy
13 | programming is not something that one could render and, and --

14 | MR. EMMONS: Well --

15 | JUDGE CHACHKIN: -- it seems to me, provide objec-
16 | tive criteria on which one can use.

17 | MR. EMMONS: Well, this, this witness has, has said
18 | why, why he thinks the programming is beneficial. I'm talking
19 | about the children's programming in particular. He's
20 | described it as nonviolent; he has said that it emphasizes
21 | good moral values and teaches lessons about human relation-
22 | ships; he described it as educational and instructional. So
23 | he's given a basis for why he has the opinion that the program
24 | is beneficial, in particular for his children, and I,
25 | Your Honor, frankly, don't see the difference between that in

1 terms of relevance and the difference -- and, and the, and the
2 community leaders' opinions that the station has done some-
3 thing good for the community because it is, it is -- tho-
4 roughly discusses certain issues.

5 JUDGE CHACHKIN: Well, again, that's a subjective
6 opinion of this listener, that he -- the way he is, he feels,
7 he, he -- it's subjective opinion that the program is not
8 violent, et cetera, et cetera, et cetera. That's a subjective
9 opinion of a listener. Now, another, another listener may
10 feel differently and then that's what I get to. Are we to
11 conduct a survey of all the listeners to find out how all the
12 listeners feel about this children's program? Do they all
13 feel that it fits -- it says what you say it says? That's my
14 difficulty, what we're getting here. It may be relevant, as
15 you say, but I have never seen a case personally where such
16 testimony has ever been, has ever been offered to demonstrate
17 that the station is deserving of renewal expectancy. If you
18 could show me case precedent where the Commission has ever
19 relied on this type of testimony, subjective evaluations of
20 ordinary listeners as a basis for granting renewal expectancy,
21 I certainly would like to see it. I've never seen it. Go
22 ahead, Mr. Honig.

23 MR HONIG: Whether or not this type of evidence has
24 been offered before, this, this exhibit is, I think, a good
25 example of why, even if it is offered, it shouldn't be

1 | accepted without a proper foundation. If you would look at
2 | paragraph 6, there is -- there are statements that, that the
3 | witness's children watch "particularly enjoy "Flying House,"
4 | which has been broadcast on Saturday for many years, and
5 | "Super Book," which has also been broadcast on Saturday for
6 | some time." This is children 2 through 11 that are -- can
7 | read this declaration watching it now, but then Mr. Everett,
8 | the station manager's declaration, which is Exhibit 32,
9 | pages 20 and 21, state that "Super Book" was only -- was
10 | broadcast in 1990 and "Flying House" was broadcast in 1990 and
11 | 1991. Without -- I'm sure that the witness wasn't trying to
12 | deceive the Commission in saying that he watches these pro-
13 | grams now, but certainly without some indication of when the
14 | programs are being watched, even approximately when, this kind
15 | of testimony can't be used, whatever weight it might have.
16 | The other point I'd like to make is that, is that testimony
17 | that goes to what a particular witness likes to watch is
18 | inherently incapable of being rebutted in a meaningful way.
19 | It would be difficult, for example, to expect community groups
20 | who take the position that a station hasn't addressed commu-
21 | nity needs to go out and get witnesses to say, "Well, we don't
22 | watch this station because we don't particularly like its
23 | programming. We'd rather see, you know, for example, we'd
24 | rather see the networks' Sunday line-ups because we like to
25 | see a lot of action, and adventure, and sex, and violence."

1 That tells you nothing either. I don't think that the struc-
2 ture of, of, of renewal expectancy issues allows for evidence
3 which basically comes down to a contest of how well does the
4 station do in the audience ratings. If that were the case, no
5 public television station could ever get a renewal expectancy.

6 JUDGE CHACHKIN: And there is also another problem.
7 We're dealing with, with a certain specific renewal period.
8 The statements seem to go well -- have no time frame.

9 MR. EMMONS: Well, Your Honor, the general introduc-
10 tion to the witness's statement, paragraph 2, specified the
11 time frame with which his testimony is concerned, and so I
12 think the -- all the testimony is subject to that qualifica-
13 tion. So --

14 MR. SCHAUBLE: Your Honor --

15 JUDGE CHACHKIN: Well, it was just pointed out by
16 Mr. Honig apparently they've been -- they're saying here
17 they've been watching it for a long time and apparently it's
18 only been on 1 or 2 years.

19 MR. EMMONS: Well, the -- Mr. Honig pointed out that
20 Mr. Everett's testimony will be more specific as to when the
21 station -- when, when that program was broadcast and,
22 obviously, that will control.

23 JUDGE CHACHKIN: It says "for many years."

24 MR. EMMONS: Well --

25 JUDGE CHACHKIN: Even goes beyond long time. It

1 | says here, "I've been watching the broadcast for many years,"
2 | and 2 years is certainly not many years.

3 | MR. EMMONS: Well, but he does identify the program
4 | and the record will show when the program was broadcast. It
5 | does show that the program was broadcast during the renewal
6 | period.

7 | JUDGE CHACHKIN: Certainly it doesn't show how many
8 | times he's seen the program or viewed it from which he could
9 | form an opinion, which particular programs he watched, when he
10 | watched it.

11 | MR. SCHAUBLE: Your Honor, any problem -- one of the
12 | problems implicit in this is that it appears from
13 | Mr. Everett's testimony that part of his opinion may have been
14 | based upon programming that was based after the renewal
15 | period.

16 | MR HONIG: It isn't on the air any more if you read
17 | Mr. Everett's testimony.

18 | JUDGE CHACHKIN: Is that right, this, this program
19 | is not carried any more?

20 | MR. EMMONS: Well, I, I don't know more than what's
21 | in paragraph 38 of Mr. Everett's testimony, and I assume,
22 | assume that that is correct.

23 | JUDGE CHACHKIN: What does it say there? When did
24 | the program ceased being carried?

25 | MR. EMMONS: It doesn't say that, that it ceased.

1 It, it, it -- that paragraph is addressing itself to the, to
2 the renewal period, of course, and, and citing the times
3 during the renewal period when the, when the program appeared.
4 It does not speak to the question of whether or not the pro-
5 gram has continued to be broadcast after the end of the
6 license term.

7 JUDGE CHACHKIN: Well, I want to make clear that I
8 will not place any weight at all on general statements which
9 have no factual basis, of which are general opinions of view-
10 ers, and even if I was inclined to consider general opinions
11 of viewers, I would still have to have some facts on which to
12 base -- on which the opinion is based, namely the times that
13 the program is watched, how often it's watched, when it was
14 watched, which is not contained in these general statements.
15 I don't know if he watched one, or two, or three, whatever
16 programs he watched, how many times he watched it. I don't
17 know to what extent he watched it. They seem to be children's
18 programs. I don't know age 2 through 11 -- I don't know when
19 he watched it or whether he just let his child watch televi-
20 sion and he was off doing some other work as a minister or as
21 a policeman. Nothing is set forth here in this general state-
22 ment. As far as I'm concerned, this is not a popularity
23 contest, and I could only base a conclusion as to renewal
24 expectancy on, on, on facts, and where conclusions are made
25 here which have no factual basis, I'm not going to, as far as

1 I'm concerned, I'm not going to put any reliance on it. And
2 that's the way I'm going to -- my view with respect to all the
3 remaining exhibits of these witnesses. If there aren't spe-
4 cifics on which I can rely on, then I will rely on the objec-
5 tive evidence, namely the programs presented that the station
6 presents in this listing of programs, its description of
7 programs, frequency that those programs are carried. That's
8 the evidence I'll rely on, not the subject opinion of viewers,
9 particularly when there's no evidence as to whether there is a
10 basis for these subjective opinions.

11 MR. SCHAUBLE: Thank you.

12 JUDGE CHACHKIN: So what's the situation with the --
13 in light of my statement, what is the situation with respect
14 to the declaration of Timothy L. Ball?

15 MR. SCHAUBLE: Well, Your Honor, I think --

16 MR. EMMONS: TBF offers it into evidence,
17 Your Honor.

18 JUDGE CHACHKIN: I understand that.

19 MR. SCHAUBLE: And I had given one objection with
20 respect to the children's programming. I, I think I would
21 object to --

22 JUDGE CHACHKIN: What paragraph are you objecting --
23 your, your objection insofar -- let me understand your objec-
24 tion insofar as children's programming. Is it paragraph 5?

25 MR. SCHAUBLE: There was a two-word phrase in

1 paragraph 5 and paragraph 6, and I was also, was also begin-
2 ning to object to paragraph 5 where it's concerned with local
3 programming on the basis that there's no, there's no due
4 competent basis shown here for the opinion.

5 MR HONIG: Your Honor, S.A.L.A.D. would have no
6 objection to paragraphs 1 through 4 but we would object to 5
7 and 6.

8 JUDGE CHACHKIN: I'm not going to receive 5 and 6.
9 I don't think it's relevant. Even if it's relevant, I think
10 it is so little of evidential value that it serves no purpose
11 by receiving it so I will not receive 5 and 6.

12 MR. EMMONS: TBF now offers TBF Exhibit 3 --

13 JUDGE CHACHKIN: All right. TBF Exhibit 2 is
14 received as modified by my rulings.

15 (Whereupon, the exhibit marked for
16 identification as TBF Exhibit 2 was
17 received into evidence.)

18 JUDGE CHACHKIN: Exhibit 3?

19 MR. EMMONS: TBF offers TBF Exhibit 3 which is the
20 declaration of Dr. Robert G. Barnes.

21 MR. SCHAUBLE: Your Honor?

22 JUDGE CHACHKIN: Yes?

23 MR. SCHAUBLE: I have the first objection. First of
24 all, on, on paragraph 2 on page 1, I have the same objection
25 concerning the date, February 1, 1992.